

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
2000 Biennial Regulatory Review --)	CC Docket No. 00-199
Comprehensive Review of the)	
Accounting Requirements and)	
ARMIS Reporting Requirements for)	
Incumbent Local Exchange Carriers:)	
Phase 2 and 3)	
)	
Amendments to the Uniform System)	CC Docket No. 97-212
Of Accounts for Interconnection)	
)	
Jurisdictional Separations Reform and)	CC Docket No. 80-286
Referral to the Federal-State Joint Board)	

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc., for itself and its wholly owned affiliates (“SBC”), submits the following reply comments in response to the comments filed by AT&T in opposition to SBC's Petition for Reconsideration of the Commission's amendment to Rule 32.11¹ in Phase 2 of the above-captioned proceedings.²

AT&T opposes SBC's Petition for Reconsideration on the rather bizarre ground that the Commission in the *Phase 2 Order* decided the issue on which SBC seeks reconsideration. AT&T does not purport to show that the FCC decided this issue correctly, nor does it respond on the merits to SBC’s arguments to the contrary. It simply notes what the FCC decided. The short answer to this frivolous response is that SBC is well aware of what the Commission decided: that

¹ SBC joins BellSouth and Verizon in a separate reply addressing the other claims made in the Opposition of AT&T.

² 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2, *et al.*, CC Docket 00-199, *et al.*, 16 FCC Rcd 19911, at par 126 (2001) (“Phase 2 Order”)

is why SBC is seeking partial reconsideration of that decision. If the decision itself were an answer to SBC's petition, there would be no point to the reconsideration process at all.

As SBC showed in its petition, the section 251(h) definition of ILEC is too broad for purposes of section 32.11 of the Commission's rules. The Commission concluded in the *Phase 2 Order* that its accounting rules should apply only to carriers that are **dominant** in their markets. But, as SBC showed, an entity can be considered a successor or assign of an ILEC under section 251(h) without being dominant in its markets. For example, under the *Ascent* decision, SBC's advanced services affiliates have been deemed successors or assigns of the ILECs. Yet, far from being dominant in the advanced services market, SBC's advanced services affiliates are struggling unsuccessfully to catch-up to their dominant cable competitors, such as AT&T, which, according to the most recent Commission pronouncement, currently enjoy a market share lead of 68% to 29% - a lead that the Commission acknowledged is growing, not shrinking^{3 4}.

AT&T nevertheless argues that SBC's advanced services affiliates are indeed dominant in their provision of advanced services. That argument lacks credibility, coming as it does from a provider with more than 2:1 (and growing) market share lead. In any event, the Commission need not decide issues of dominance in this proceeding. The very fact that the Commission has initiated a proceeding to consider *whether* ILECs are non-dominant in their provision of advanced services is proof of the Commission's recognition that ILEC status does not, in and of itself, necessarily equate to dominant carrier status. Thus the Commission itself has recognized the very point that SBC presses in its petition for reconsideration.

³ *Declaratory Ruling and Notice of Proposed Rule Making, Inquiry Concerning High Speed Access to Internet Over Cable and Other Facilities*, FCC 02-77, GN Docket No. 00-185, CS Docket No. 02-52 (March 15, 2002) at ¶ 9.

⁴ The District of Columbia Circuit Court of Appeals recently noted the Commission's acknowledgement of cable's dominance in the broadband market as it vacated the Commission's Line Sharing Order in *USTA v FCC*, No. 00-1012, 2002 WL 1040574, at *12 (D.C. Cir. May 24, 2002).

According to AT&T, SBC's proposal would allow ILECs to avoid their statutory and regulatory obligations by transferring services to a successor or an assign.⁵ This assertion as well is frivolous. SBC proposes that the Commission decide on a case-by-case whether its accounting rules should apply to any entity that is treated as an ILEC for purposes of section 251(c) under 251(h)(B)(ii) or 251(h)(2).⁶ SBC's proposal requires the Commission to evaluate whether carriers that meet the definition of ILEC under 252(h)(1)(B)(ii) are dominant in their markets before subjecting them to the accounting rules.⁷ If the Commission conducts such a review, the Commission will certainly ensure that these entities adhere to the appropriate statutory and regulatory obligations.

In the final analysis, AT&T's opposition is just another link in a growing chain of AT&T's attempts to abuse the regulatory process. When AT&T was regulated as dominant in its provision of long-distance services, it complained bitterly about the regulatory gamesmanship of its non-dominant competitors. It argued that those competitors fought their competitive battles in the regulatory arena instead of the marketplace. AT&T now resorts shamelessly to those very same tactics. Indeed, AT&T sinks to a level those competitors never fathomed by making the exact opposite arguments in concurrent pending Commission proceedings. Whereas it claims here that ILECs are dominant in their provision of DSL services, it simultaneously touts the fierce competition between DSL and cable modem service in its efforts to shore up its merger application in the *AT&T/Comcast Merger* proceeding.⁸ The Commission should send a clear

⁵ AT&T Comments at 5.

⁶ See SBC's Petition for Reconsideration at 2.

⁷ SBC's proposal is analogous to the Commission's ruling in its Accounting Safeguards Order where it held that the cost allocation rules need not apply to BOC 271 and 272 affiliates when they provide regulated and non-regulated activities. See *Accounting Safeguards Under the Telecommunications Act of 1996, Report and Order*, CC Docket No. 96-150, 11 FCC Rcd 17539, 17621, ¶ 178 (1996).

⁸ See *Applications for Consent to Transfer Control of Licenses, Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70, AT&T Reply Comments at 75 (filed May 21, 2002).

message to AT&T that these kinds of tactics will not be countenanced. It should expeditiously grant SBC's petition for reconsideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Regina Ragucci, do hereby certify that on this 28th day of May 2002, Reply Comments of SBC Communications Inc. in CC Docket No. 00-199, 97-212 and 80-286, were served first class mail - pre-paid postage to the party attached.

/s/ Regina Ragucci
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